REMARKS/ARGUMENTS:

Claims remain 1- 20 remain in the application. Claims 1, 8 and 22 have been amended.

Applicant believes the amendments add no matter. In particular, support for the amendments to claims 1 and 22 may be found at least with respect to paragraphs 59-60 and 97-98 of U.S. publication 20040180721, which is the corresponding publication of current application.

Priority and Specification

Specification has been amended and a new ADS has been filed to indicate that the present application is a continuation of 10/659,827, which is a divisional of 09/746944.

Double Patenting

A terminal disclaimer is filed with this response and the rejection is believed overcome thereby.

Rejections under 35 U.S.C. § 112, Second Paragraph

Claim 8 has been amended to depend from claim 7 and the rejection is believed overcome thereby.

Rejections under 35 U.S.C. § 102

Claims 1, 3, 5-8, 12-17 and 20-22 are rejected under 35 U.S.C 102(a) as being anticipated by disclosed admitted prior art.

The rejection is respectfully traversed.

The Office Communication uses paragraphs 3-12 and fig. 1 of instant application as being anticipatory to claims 1, 3, 5-8, 12-17 and 20-22. Paragraphs 3-12 do not explicitly teach all of the limitations of the these claims. For instance, these paragraphs do not explicitly teach

"a memory arranged to store a) gaming terminal transaction information received from the plurality of gaming terminals and b) game software components for use by the plurality of gaming terminals wherein each of the gaming terminals is used to present a game of chance that is regulated by a gaming jurisdiction in which the gaming terminal is located; and a processor designed or configured to download to the gaming terminals game software components that comply with rules of the gaming jurisdiction in which the gaming terminals are located."

Although the paragraph 3-12 and FIG. 1 do not describe downloading of game software components and an infrastructure for supporting such downloads, the Office Communication makes the assertion that these limitations are implicit and refers to other references to establish their inherency. For instance, the Office Communication refers to Boushy to suggest the admitted prior art describes "dumb terminals" and downloading to such devices although this term is not used in the description of the admitted prior art described with respect to paragraphs 3-12. Applicant respectfully asserts that a mere suggestion that a capability may be present or may occur as evidenced by other prior art is not enough to establish an anticipation rejection.

In regards to inherency, **MPEP 2112 recites under, IV. EXAMINER MUST PROVIDE RATION-ALE OR EVIDENCE TENDING TO SHOW INHERENCY,**

1) The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.

2) To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.

3)In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.

Applicant does not believe that the extrinsic evidence provide in the Office Communication makes clear that the missing descriptive matter is necessarily present. It merely suggests a possibility which is not sufficient to establish inherency. Therefore, for at least these reasons, admitted prior art can not be said to anticipate claims 1, 3, 5-8, 12-17 and 20-22 and the rejection is believed overcome thereby.

In addition, the admitted prior art does not explicitly or implicitly teach as recited in the pending claims,

A gaming terminal data repository comprising "a processor designed or configured to 1) download to the gaming terminals game software components that comply with rules of the gaming jurisdiction in which the gaming terminals are located, 2) based upon the gaming transaction information, determine a performance of a first game of chance currently installed on a first gaming terminal in the plurality of gaming terminals, 2) compare the determined performance of the first game of chance to a game performance criterion, 3) in response to the comparison of the determine performance of the first game to the game performance criterion, download first game software components from among the game software components that allow a second game of chance different from the first game of chance to be played on the first gaming terminal."

Therefore, for at least these reasons, admitted prior art can not be said to anticipate claims 1, 3, 5-8, 12-17 and 20-22 and the rejection is believed overcome thereby.

Rejections under 35 U.S.C. § 103

11. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over disclosure of admitted prior art in view of either O'Conner (6178510) or Paravia (6508710) or Martin (5618232).

12. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over admitted prior art in view of Walker (6110041).

13. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over admitted prior art in view of Wain (4335809).

14. Claims 10-11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over disclosed admitted prior art in view of Alderson (5019963), Fawcett (5845077), Frye (6047129) or Halliwell (5473772).

15. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over disclosed admitted prior art in view of Heath (6006034).

Claims as amended describe a gaming terminal data repository comprising "a processor designed or configured to 1) download to the gaming terminals game software components that comply with rules of the gaming jurisdiction in which the gaming terminals are located, 2) based upon the gaming transaction information, determine a performance of a first game of chance currently installed on a first gaming terminal in the plurality of gaming terminals, 2) compare the determined performance of the first game of chance to a game performance criterion, 3) in response to the comparison of the determine performance of the first game to the game performance criterion, download first game software components from among the game software components that allow a second game of chance different from the first game of chance to be played on the first gaming terminal."

Alderson, Fawcett, Frye, Halliwell or Heath do not describe gaming including games of chance. O'Conner, Paravia, Martin, Walker and Wain describe gaming. Wain is the only reference that appears to teach or suggest a download of a game. Nevertheless, none of the cited references appear to teach the limitations of the amended claims. Therefore, for at least these reasons, thus, admitted prior art, Alderson, Fawcett, Fry, Halliwell, Heath, O'Conner, Paravia, Martin, Walker or Wain, alone or in combination, can't be said to render obvious the claims as amended and the rejections are believed overcome thereby.

Applicant believes that all pending claims are allowable and respectfully requests a Notice of Allowance for this application from the Examiner. Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set out below.

Respectfully submitted,
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